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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 09/729,888 | 12/04/2000 | James B. Copelan | | 7354 |

| | | |
|---|---|---|
| 7590 | 07/01/2002 | |

Linda Flewellen Gould
Gould & Whitley
1665 Briargate Blvd, Suite 101
Colorado Springs, CO  91380-2976

| EXAMINER |
|---|
| BROWN, MICHAEL A |

| ART UNIT | PAPER NUMBER |
|---|---|
| 3764 | |

DATE MAILED: 07/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. 09/729,888 | Applicant(s) James B. Coprlan |
| :--- | :--- | :--- |
| | Examiner Michael Brown | Group Art Unit 3764 |

**—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—**

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____1_____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle,* 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

☑ Claim(s) _____9-16 and 18_____ is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☑ Claim(s) _____9-16 and 18_____ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 11 9(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.
☐ received in Application No. (Series Code/Serial Number)_____.
☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received:_____.

## Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____   ☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892   ☐ Notice of Informal. Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948   ☐ Other_____

**Office Action Summary**

# DETAILED ACTION

## *Election/Restriction*

1.      Restriction to one of the following inventions is required under 35 U.S.C. 121:

      I.      Claims 9-16 are, drawn to a pre-surgical alerting device and a method of use,

             classified in class 128, subclass 846.

      II.      Claim 18 is, drawn to a pre-surgical alerting method, classified in class 128,

             subclass 898.

2.      The inventions are distinct, each from the other because of the following reasons:

Inventions Group I and Group II are unrelated.  Inventions are unrelated if it can be shown that

they are not disclosed as capable of use together and they have different modes of operation,

different functions, or different effects (MPEP § 806.04, MPEP § 808.01).  In the instant case the

different inventions Group II can be used without using Group I.

3.      Because these inventions are distinct for the reasons given above and have acquired a

separate status in the art as shown by their different classification, restriction for examination

purposes as indicated is proper.

4.      Because these inventions are distinct for the reasons given above and the search required

for Group I is not required for Group II, restriction for examination purposes as indicated is

proper.

5.      Because these inventions are distinct for the reasons given above and have acquired a

separate status in the art because of their recognized divergent subject matter, restriction for

examination purposes as indicated is proper.

6.      Any inquiry concerning this communication or earlier communications from the examiner

should be directed to Michael Brown whose telephone number is (703) 308-2682.

M. Brown
June 28, 2002

Michael A. Brown
Primary Examiner